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October 23, 2018

SUBMITTED ELECTRONICALLY VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **MEETING SUMMARY PER SECTION 1.1208 OF THE FCC'S RULES**
Schools and Libraries Universal Service Support Mechanism,
Docket No. 02-6

Dear Ms. Dortch:

On behalf of the Missouri Research and Education Network (MOREnet), this *ex parte* memorializes meetings between MOREnet and Commission staff regarding MOREnet's Request for Review and/or Waiver.¹ On October 18, 2018, Lynn Burgan, Chief Financial Officer for MOREnet; Chris Schneider, MOREnet senior finance and accounting manager and Missouri state E-rate coordinator; and the undersigned spoke with D'wana Terry, Ryan Palmer, Gabriela Gross, and Ike Ofobike of the Wireline Competition Bureau. On October 19, 2018, the same MOREnet representatives met with Nirali Patel, Wireline Advisor in the Office of Chairman Ajit Pai.

MOREnet explained that it attempts to group its member entities into an application using "bands" or ranges of discounts so that the higher-discount schools and libraries receive close to the discount they would have received if they applied on their own – consistent with the Commission's policy goals. MOREnet also groups its member applicants by vendor and by contract terms or procurement.

In addition to describing how MOREnet calculates its discount, MOREnet emphasized that it was following Commission directives to ensure that its highest-discount members were not unduly disadvantaged by participating in the program.² More importantly, MOREnet noted that it would be fundamentally unfair for the Commission to acknowledge that consortia applicants had the flexibility under the rules to include members on their applications and to seek comment

¹ Request for Review and/or Waiver, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Missouri Research and Education Network (filed Mar 23, 2018).

² *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, ¶¶ 286-291 (2014).

on changing those rules but hold a consortia responsible to calculating the discount in some other way, even when the Commission did not adopt such a requirement.³

Further, MOREnet noted that USAC requires consortia to calculate its discount by taking the average of the consortia members on an application via its IT system implemented in 2016. No rules changed from FY 2013 and FY 2014 – the years at issue – that would have resulted in or required different calculation methodologies. MOREnet calculated its discount in FYs 2013 and 2014 exactly the same way that USAC is doing so today.

Also attached is a brief summary of the issues identified in the appeal as well as a 2014 newsletter issued by the Universal Service Administrative Company (USAC) that directs consortia to calculate their discounts by taking a simple average of the discounts of their members on an application.

Pursuant to Section 1.1206(b)(2) of the Commission’s rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket and courtesy copies will be sent to the Commission attendees. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Gina Spade

Gina Spade
Counsel for the Missouri Research and Education Network

cc: Nirali Patel (via email)
D’wana Terry (via email)
Ryan Palmer (via email)
Gabriela Gross (via email)
Ike Ofobike (via email)

³ *Id.*

MOREnet FYs 2013/2014 E-rate Commitment Adjustments

Overview: This appeal may seem complicated but is actually very simple. USAC's decision to seek recovery is inconsistent not just with the Commission's rules regarding how consortia should calculate their discount rate, but with USAC's *own* guidance and statements in general and to MOREnet individually.

Background

The Missouri Research and Education Network (MOREnet) has participated in the E-rate program since the program's inception in 1998. The MOREnet consortium consists of nearly 600 E-rate eligible schools and libraries across Missouri.

In June 2017, USAC notified MOREnet, a consortium of public schools in Missouri, that it was reducing its funding commitments for FYs 2013 and 2014 and seeking recovery of more than \$400,000. USAC believes that MOREnet incorrectly calculated the discount for its consortium applications.

In its denial, USAC states that "[f]or FY2014/FY2013, only the entities receiving service for each funding request can be used to determine the FRN specific discount." (emphasis added)

Analysis

- 47 C.F.R. § 54.505(b)(4) - School districts, library systems, or **other billed entities shall calculate discounts on supported services** described in § 54.502 or other supported special services described in § 54.503 **that are shared by** two or more of their schools, libraries, or **consortia members by calculating an average based on the applicable discounts of all member schools and libraries.**
- There is no requirement that applicants calculate their discounts at the FRN level. In fact, Commission orders and USAC guidance refer to applications.
 - MOREnet determines its discount rate for each application based on the members included on that specific application.
 - MOREnet's members are sharing the MOREnet network services on each application. Not only are MOREnet's members receiving the same service, but they are sharing a common network.
 - The application-based methodology MOREnet used for FYs 2013 and 2014 is the exact same methodology USAC uses today to calculate the discount rate for consortia applications.
 - There was no intervening rule change that would have caused the methodology used by MOREnet to violate the rules before FY 2015 but be in compliance with the rules now.
 - A USAC email response to MOREnet when trying to explain this denial indicated that the discount calculation is now an average of the entities listed on the application. It appears to say that, prior to the Modernization Order, there was a different rule. The Modernization Orders, however, did not change any part of the consortia discount calculation.

- The Commission has not changed consortia discount calculation rules; therefore, a discount methodology that is acceptable today would have been acceptable five years ago.
- In 2014, the Commission proposed to change its rules to require consortia to submit a separate funding request to ensure that each consortium member would receive the exact discount it would receive if it applied on its own. Each consortium lead would create a separate funding request for each member/group of members who shared the same discount rate. This proposal, which was not adopted by the Commission, is essentially what USAC is arguing was the rule in funding years 2013 and 2014.
- Form 471 instructions direct applicants to averaging the discount rates in a single application when the entities share one or more services, regardless of whether the entities also receive site-specific services.
- Finally, a USAC newsletter from September 2014 provides instructions on how to calculate consortia discounts. MOREnet calculated its discounts consistent with those instructions and USAC's website (<https://www.usac.org/sl/applicants/step03/discounts.aspx#library-system>).
- To calculate the discount for a consortium or statewide application:
 - List each member of the consortium or statewide application together with its discount (by entity or school district).
 - Add the discounts and divide by the number of members.
 - The discount for a consortium or statewide application applies to all members requested on the application, whether one member, a subset of members, or all members share the service.

Conclusion

- MOREnet calculated its consortia discount in 2013 and 2014 in the exact same way that USAC uses to calculate consortia discounts today.
- The Commission sought comment in 2014 regarding the consortia discount calculation rules—essentially proposing to require what USAC believes MOREnet should have done—but declined to revise its rules.
- Just because MOREnet could have calculated its discount differently—by filing separate applications for each entity—does not mean it should have done so.
- MOREnet's calculation is consistent with the rule, consistent with Commission orders and form instructions, and consistent with USAC's guidance.

SCHOOLS AND LIBRARIES PROGRAM

NEWS BRIEF

September 26, 2014

Please continue to check the [E-rate Modernization Order web page](#) for links to additional information.

TIP OF THE WEEK: Plan to complete your invoicing for FY2013 recurring services as soon as possible, keeping in mind that your service provider may need time to review and approve an online BEAR Form. You can also ask for an [invoice deadline extension](#) for the deadline of October 28, 2014, if you know that you will not be able to complete your invoicing by then.

Commitments for Funding Years 2014, 2013, and 2012

Funding Year 2014. USAC will release Funding Year (FY) 2014 Wave 21 Funding Commitment Decision Letters (FCDLs) on October 1. This wave includes commitments for approved Priority 1 (Telecommunications Services and Internet Access) requests at all discount levels. As of September 26, FY2014 commitments total over \$1.92 billion.

Funding Year 2013. USAC will release FY2013 Wave 67 FCDLs on October 2. This wave includes commitments for approved Priority 1 requests at all discount levels. As of September 26, FY2013 commitments total over \$2.11 billion.

Funding Year 2012. USAC will release FY2012 Wave 93 FCDLs on October 3. This wave includes commitments for approved Priority 2 (Internal Connections and Basic Maintenance) requests at 90 percent and denials at 89 percent and below. As of September 26, FY2012 commitments total over \$2.86 billion.

On the day the FCDLs are mailed, you can check to see if you have a commitment by using USAC's [Automated Search of Commitments](#) tool.

E-rate Modernization Order: More on Discount Calculations

The Federal Communications Commission (FCC) adopted the [E-rate Modernization Order](#) on July 11, 2014. The Order takes major steps to modernize and streamline the E-rate program and focuses on expanding funding for Wi-Fi networks in eligible elementary and secondary schools and libraries across America.

In [last week's SL News Brief](#), we discussed general concepts for discount calculations in FY2015. This week we will provide specific information on the discount calculation for each type of entity and application type. We suggest that you re-read [last week's SL News Brief](#) before reviewing the information below.

School district discount calculations for FY2015

In general, the school district calculation is the basis for discount calculations for all types of entities.

To calculate the discount for a school district:

- Determine the total number of students eligible for the National School Lunch Program in the entire school district.
- Determine the total number of students in the school district.

- Divide the first number by the second number to get the percentage of students eligible for NSLP in the school district.
- Using this percentage and the urban or rural status of the school district (see below), find the appropriate E-rate discount for the school district in the discount matrix. Remember that if the school district is eligible for a Category One discount of 90 percent, it is eligible for a Category Two discount of 85 percent.

The discount for each school and each non-instructional facility (NIF) – if the NIF is eligible – in the school district is the discount as calculated above (note that NIFs do not have budgets for Category Two services – applicants must allocate eligible NIF costs to one or more of the entities benefiting from that Category Two service). If only one school in the district receives a service, or that service is shared among a subset of schools in the district, or among all schools in the district, the discount does not change.

Voice services are subject to a phase down of 20 percentage points per year starting with FY2015. For example, a school district that is eligible for an 80 percent discount for Category One services will be eligible for a 60 percent discount on voice services for FY2015 and a 40 percent discount on voice services for FY2016.

For more information on what can be considered a school district, refer to the section labeled "School districts" in [last week's SL News Brief](#).

Individual school discount calculations for FY2015

If an individual school that is part of a school district wants to file a separate application, its discount is the calculated discount for the school district of which it is a part, and it must provide that calculation on its application. An individual school that is part of a school district does not calculate its discount based on its own student population.

An independent school – a school that does not share a common board with other schools and is individually responsible for its finances and administration – would follow the school district calculation method above, using its student population numbers and the urban or rural status of its physical location.

Library system discount calculations for FY2015

To calculate the discount for a library system:

- Determine the total number of students eligible for the National School Lunch Program in the public school district in which the main branch of the library is located.
- Determine the total number of students in that school district.
- Divide the first number by the second number to get the percentage of students eligible for NSLP in that school district.
- Using this percentage and the urban or rural status of the library system (see below), find the appropriate E-rate discount for the library system in the discount matrix. Remember that if the library system is eligible for a Category One discount of 90 percent, it is eligible for a Category Two discount of 85 percent.

The discount for each library outlet/branch and each library NIF – if the NIF is eligible – in the library system is the discount as calculated above (note that NIFs do not have budgets for Category Two services – applicants must allocate eligible NIF costs to one or more of the entities benefiting from that Category Two service). If only one library outlet/branch in the library system receives a service, or that service is shared among a subset of library outlets/branches in the library system, or among all library outlets/branches in the library system, the discount does not change.

Voice services are subject to a phase down of 20 percentage points per year starting with FY2015. For example, a library system that is eligible for an 80 percent discount for Category One services will be eligible for a 60 percent discount on voice services for FY2015 and a 40 percent discount on voice services for FY2016.

Consortium and statewide application discount calculations for FY2015

To calculate the discount for a consortium or statewide application:

- List each member of the consortium or statewide application together with its discount as calculated above.

- Add the discounts and divide by the number of members.

Keep the following in mind:

- Consortia and statewide applications do not have an urban or rural status. The discount is a simple average of the member discounts, whether each individual member is urban or rural.
- For Category Two funding requests, use the Category Two discount for each member (which cannot exceed 85 percent) when calculating the discount for a consortium or statewide application.
- The discount for a consortium or statewide application applies to all services requested on the application, whether one member, a subset of members, or all members share the service.
- Voice services are subject to a phase down of 20 percentage points per year starting with FY2015. For example, a consortium or statewide application that is eligible for an 80 percent discount for Category One services will be eligible for a 60 percent discount on voice services for FY2015 and a 40 percent discount on voice services for FY2016.
- Consortium and statewide applications are the only applications that can have a discount that does not appear on the discount matrix (e.g., 72 percent, 45 percent, etc.) because the consortium or statewide discount is a calculated average of the member discounts.
- If the discount calculation results in a decimal, round down to the nearest whole number for decimals less than 0.5 and round up for decimals equal to or greater than 0.5 (e.g., 74.4 becomes 74, 62.5 becomes 63).

Relation of urban or rural status to discount calculations

For a school district to be eligible for a rural discount, a majority (more than 50 percent) of the individual schools in the school district must be rural.

- NIFs are not included in the calculation.
- If one or more charter schools are considered part of the school district, they must be included in the calculation.
- If a school has three different locations (and therefore three different entity numbers) but is considered one school by the state, include only the main school in the calculation.

For a library system to be eligible for a rural discount, a majority (more than 50 percent) of the individual library outlets/branches in the library system must be rural.

- NIFs are not included in the calculation.
- Bookmobiles and library kiosks can be included in the calculation. The address of record in USAC's system for bookmobiles and library kiosks will be used to determine whether they are urban or rural.

We will provide more information on urban and rural status in a future SL News Brief.

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